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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re ANDRE M., a Person Coming Under  
the Juvenile Court Law.

B195005  
(Los Angeles County  
Super. Ct. No. PJ37657)

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDRE M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Robert Totten, Commissioner (pursuant to Cal. Const., art. VI, § 21). Affirmed as modified.

Judith Vitek, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H. Borjon, Supervising Deputy Attorney General, John R. Gorey, Deputy Attorney General, for Plaintiff and Respondent.

## INTRODUCTION

The District Attorney of Los Angeles County filed a petition alleging that defendant and appellant Andre M. (Andre) came within the provisions of Welfare and Institutions Code section 602 because he committed second degree robbery in violation of Penal Code section 211. The juvenile court found the allegation to be true, sustained the petition, and declared the offense to be a felony. The juvenile court placed Andre on home probation in the care custody and control of his parents under the supervision of the Probation Department for a five-year maximum period of physical confinement. Among the terms and conditions of Andre's probation is the condition that he is "not to associate with anyone your parents disapprove of" and that he is "to stay away from places where users [of narcotics or controlled substances] congregate."

On appeal, Andre contends that the conditions of his probation that he is not to associate with persons his parents disprove of and he is to stay away from places where persons who use narcotics or controlled substances congregate are unconstitutionally vague and overbroad because they do not address "knowing" conduct. That is, the terms do not bar his "knowing" association with persons his parents disapprove of or require him to stay away from places where he "knows" persons who use narcotics or controlled substances congregate. These conditions, Andre contends, should be modified to include the element of knowledge. We hold that the challenged terms are unconstitutionally vague and order the order declaring Andre to be a ward of the court modified to reflect that Andre is not to associate with persons he knows his parents disapprove of and is to stay away from places where he knows persons who use narcotics or controlled substances congregate.

We requested the parties to file supplemental briefs addressing the issue of whether the trial court erred in setting a maximum period of confinement when it placed Andre in his parents' custody. The parties agree that the trial court erred in setting a maximum period of confinement. We order the five-year maximum period of confinement struck from the order declaring Andre to be a ward of the court.

## **BACKGROUND**

Because the resolution of the issues on appeal does not depend on the facts underlying Andre's offense, we dispense with a recitation of those facts.

## **DISCUSSION**

### **I. The Probation Conditions Barring Andre From Associating With Certain Persons and From Being In Certain Places Are Unconstitutionally Vague**

Andre contends that the conditions of his probation barring him from associating with persons his parents disprove of and barring him from places where persons who use narcotics or controlled substances congregate are constitutionally vague and overbroad because they do not address "knowing" conduct. These conditions should be modified, Andre contends, to include the element of knowledge. Respondent concedes that "it appears [Andre's] contention is well taken and respondent has no objection to the requested modification." Andre's failure to object before the juvenile court does not constitute a forfeiture of the issue. (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.)

Our Supreme Court recently decided *In re Sheena K.*, *supra*, 40 Cal.4th at page 878, in which a juvenile probationer challenged, as unconstitutionally vague and overbroad, a probation condition that she "not associate with anyone disapproved of by probation." The Court of Appeal held that the condition was both vague and overbroad because the juvenile court had not required that the juvenile know which persons the probation officer disapproved of to be in violation of the probation condition. (*Id.* at p. 890.) The Supreme Court agreed with the Court of Appeal, holding that "in the absence of an express requirement of knowledge, the probation condition imposed upon defendant is unconstitutionally vague." (*Id.* at p. 891, footnote omitted.) Because the Supreme Court held the probation condition unconstitutionally vague, it did not decide whether the condition also was unconstitutionally overbroad. (*Ibid.*, fn. 8.) The Supreme Court further held that "modification to impose an explicit knowledge requirement is necessary to render the condition constitutional. [Citations.]" (*Id.* at p. 892.)

The probation conditions challenged here likewise lack a specific knowledge requirement. These conditions must be modified to include the requirement that Andre is not to associate with persons he knows his parents disprove of and is to stay away from places where he knows persons who use narcotics or controlled substances congregate.

## **II. The Five-Year Maximum Period of Physical Confinement Is Stricken**

A maximum period of physical confinement may not be set when a juvenile is placed on home probation in his parents' custody. (*In re Ali A.* (2006) 139 Cal.App.4th 569, 573-574 [holding that a maximum period of confinement in a dispositional order was of no legal effect because the ward was not removed from his parents' custody].) The parties agree that the juvenile court erred when it set a five-year maximum period of physical confinement for Andre. That maximum period of physical confinement is stricken from the juvenile court's order declaring Andre to be a ward of the court.

### **DISPOSITION**

The juvenile court's order declaring Andre to be a ward of the court is affirmed; the order is modified to reflect that Andre is not to associate with persons he knows his parents disapprove of and is to stay away from places where he knows persons who use narcotics or controlled substances congregate; that part of the order setting a five-year maximum period of physical confinement is stricken.

MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.